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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,941	03/23/2001	Stephen Christopher Kitson	30001065	6953

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EXAMINER

DUONG, THOI V

ART UNIT

PAPER NUMBER

2871

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/816,941

Applicant(s)

KITSON ET AL.

Examiner

Thoi V Duong

Art Unit

2871

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the Amendment, Paper No. 8, filed March 16, 2003.

Accordingly, claims 1, 13, 14, 15, 18 and 22 were amended, claim 21 was cancelled, and new claim 23 was added. Currently, claims 1-20, 22 and 23 are pending in this application.

Applicant's arguments with respect to claims 1-20 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-20, 22 and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/816942 and claims 1-15 of copending Application No. 09/815999. Although the conflicting claims are not identical, they are not patentably

Art Unit: 2871

distinct from each other because the examined claims are either anticipated by or would have been obvious over the reference claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1-4, 8, 10-14 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Bryan-Brown et al. (USPN 5,754,264).

As shown in Figs. 1, 2, and 5, Bryan-Brown et al. discloses a liquid crystal device comprising a first cell wall 4 and a second cell wall 3 enclosing a layer 2 of liquid crystal material;

electrodes 6 and 7 for applying an electric field across at least some of the liquid crystal material; and

a surface alignment structure 26 on the inner surface of at least the first cell wall providing a single desired alignment to the liquid crystal director (col. 2, line 66 to col. 3, line 9),

wherein the said surface alignment structure comprises a two dimensional array of upstanding features which are at least one of shaped and orientated to produce the desired alignment; but not including any device in which the surface alignment structure comprises a sinusoidal bigrating (col. 2, lines 32-40);

wherein the features have a height in the range of about 1-3 micrometers (col. 3, lines 18-28);

wherein at least part of a side wall of the features is tilted with respect to the normal to the plane of the first cell wall (Fig. 5, blazed gratings);

wherein each feature has a width in the range of about 0.5 micrometer (col. 5, lines 11-19);

wherein the features are formed from at least one of a photoresist or a plastics material (col. 3, lines 18-21);

wherein the features are of at least one of a different height, different shape, different tilt and different orientation in different regions of the device (col. 3, lines 46-50); and

wherein the upstanding features are formed from at least one of a photoresist material or a plastics material (col. 3, lines 18-21 and col. 4, line 56 through col. 5, line 7);

As shown in Figs. 3 and 4, Bryan-Brown et al. discloses a method of manufacturing the cell wall comprising applying a photoresist material to a surface of a wall 35, exposing the applied photoresist material to a suitable light source 41 through a suitably patterned mask 38, removing soluble photoresist, and hardening the exposed

Art Unit: 2871

photoresist material to produce a two dimensional array of alignment features on the wall; said method excluding any method which produces a sinusoidal bigrating (col. 4, line 36 through col. 5, line7).

Bryan-Brown et al. also discloses a method of manufacturing a cell wall comprising applying a plastics material to the surface of a wall, and embossing a two dimensional array of alignment features into the plastics material; said method excluding any method which produces a sinusoidal bigrating (col. 2, lines 32-34 and col. 3, lines 21-28).

Further, Bryan-Brown et al. discloses a method of manufacturing the liquid crystal device, as shown in Figs. 1 and 2, comprising securing a first cell wall 4 to a second cell wall 3, so as to produce a cell having spaced apart cell walls; filling the cell with a liquid crystal material 2, and sealing the cell; wherein one or both of said first cell wall and said second cell wall have at least one electrode structure thereon so that said liquid crystal device has electrode structures 6 and 7 for applying an electric field across at least some of said liquid crystal material (col. 3, lines 45-65); wherein said first cell wall comprises a wall and said alignment structure on one surface thereof for providing a single desired alignment to the director of a liquid crystal material (col. 2, line 66 through col. 3, line9), wherein said first cell wall is manufactured by a method comprising applying a plastics material to the surface of a wall, and embossing a two dimensional array of alignment features into said plastics material (col. 3, lines 21-28).

Finally, with respect to new claim 23, the liquid crystal device of Bryan-Brown et al. does not include any device in which the said features are treated with or formed

Art Unit: 2871

from a material such as a lecithin solution (a surfactant) which induce local homeotropic alignment in the liquid crystal material (col. 3, lines 10-28).

6. Claims 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Bryan-Brown et al. (USPN 6,549,256 B1).

As shown in Figs. 1, 2 and 5, Bryan-Brown et al. discloses a liquid crystal device comprising a first cell wall 3 and a second cell wall 4 enclosing a layer 2 of liquid crystal material (col. 4, lines 21-38);

electrodes 6, 7 for applying an electric field across at least some of said liquid crystal material; and

a surface alignment structure 17 on the inner surface of at least said first cell wall providing at least one of a desired homeotropic or tilted homeotropic alignment to the liquid crystal director in a single azimuthal direction (col. 2, lines 25-30 and col. 4, lines 51-55);

wherein said surface alignment structure comprises an array of upstanding features (or posts) which are at least one of shaped and orientated to produce the desired alignment as shown in Figs. 11a-11c,

wherein said features have a height that is at least equal to the average spacing between said features (col. 8, lines 6-8)

wherein at least part of a side wall of the features is tilted with respect to the normal to the plane of the first cell wall (see Fig. 11b); and

wherein each upstanding feature or post comprises a discrete structure as shown in Figs. 11a-11c.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,754,264 (US'264) in view of USPN 5,917,570 (US'570) of Bryan-Brown et al..

US'264 of Bryan-Brown et al. discloses a liquid crystal device that is basically the same as that recited in claims 5-7 and 9 except for some dimensions of the features and a surfactant for the liquid crystal material. As shown in Fig. 6, US'570 of Bryan-Brown et al. a grating formed of a photoresist material, wherein each feature has a width about 0.7 micrometer and the features are spaced about 0.5 micrometer (col. 5, lines 29-35). US'570 also discloses that a surfactant such as lecithin can be added to the grating surface to induce homeotropic alignment for the liquid crystal material (col. 6, lines 10-19). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the liquid crystal device of US'264 with the teaching of US'570 of Bryan-Brown et al. by adding a surfactant to induce local homeotropic alignment in the liquid crystal material.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bryan-Brown et al. (USPN 5,917,570) in view of Kishimoto et al. (USPN 6,266,122 B1).

As shown in Figs. 1 and 2, Bryan-Brown et al. discloses a liquid crystal device comprising a first cell wall 4 and a second cell wall 3 enclosing a layer 2 of liquid crystal material; electrodes 6 and 7 for applying an electric field across at least some of the liquid crystal material; and a surface alignment structure on the inner surface of at least the first cell wall providing desired alignments to a liquid crystal director in different zenithal directions as shown in Figs. 5a and 5b. Bryan-Brown et al. discloses a liquid crystal device that is basically the same as that recited in claim 22 except that the desired alignments to the liquid crystal director are not in at least three azimuthal directions. As shown in Figs. 1 and 4, Kishimoto et al. discloses a liquid crystal device comprising polymer walls 16 formed of a photosensitive resin, wherein the liquid crystal molecules 33 are aligned to be perpendicular to a surface 12a, a side surface 16s and a top surface 16t of the polymer wall (col. 7, line 55 through col. 8, line 22). Accordingly, the liquid crystal molecules are aligned in at least three azimuthal directions. Kishimoto et al. teaches that when the liquid crystal molecules are aligned in axial symmetry, anisotropy of a refractive index of the liquid crystal molecules is averaged in all the azimuthal directions; therefore, there is no problem of having greatly different viewing angle characteristics depending upon the azimuthal direction (col. 7, lines 36-50). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the liquid crystal device of Bryan-Brown et al. with the teaching of Kishimoto et al. by forming the surface alignment structure comprising an array of features which are at least one of shaped and orientated to produce alignments

Art Unit: 2871


to a liquid crystal director in at least three azimuthal directions to obtain a wide view angle characteristic for the display.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thoi V. Duong whose telephone number is (703) 308-3171. The examiner can normally be reached on Monday-Friday from 8:00 am to 4:30 pm.

Thoi Duong

06/02/2003


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